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25 IONpath, Inc.

26 **UNITED STATES DISTRICT COURT**  
27 **NORTHERN DISTRICT OF CALIFORNIA**  
28 **SAN FRANCISCO DIVISION**

19 FLUIDIGM CORPORATION, A DELAWARE  
20 CORPORATION; AND FLUIDIGM CANADA  
21 INC., A FOREIGN CORPORATION,

22 Plaintiffs,

23 v.

24 IONPATH, INC., A DELAWARE  
25 CORPORATION,

26 Defendant.

Case No. 3:19-cv-05639-WHA

**DEFENDANT IONPATH, INC.'S  
ANSWER AND COUNTERCLAIMS  
TO PLAINTIFFS FLUIDIGM  
CORPORATION AND FLUIDIGM  
CANADA INC.'S SECOND AMENDED  
COMPLAINT**

Defendant IONpath, Inc. (“IONpath” or “Defendant”), hereby answers Plaintiffs Fluidigm Corporation and Fluidigm Canada, Inc.’s (collectively “Fluidigm” or “Plaintiffs”) Second Amended Complaint for Trademark Infringement and Intentional Interference with Contractual Relations (the “Complaint”) as follows. Defendant denies each and every allegation contained in the Complaint that is not expressly admitted below. To the extent any factual allegation below is admitted, it is admitted only as to the specific admitted facts, not as to any purported conclusions, characterizations, implications or speculations that arguably may follow from the admitted facts. No admission below should be construed as an admission or concession regarding the relevance of any allegation to any cause of action identified in the Complaint. No admission below should be construed as an admission concerning the accuracy, authenticity, admissibility, or relevance of any documents cited or referenced in the Complaint. Furthermore, Defendant’s inclusion of the headings from the Complaint below is for purposes of convenience only and should not be construed as an admission or concession regarding the accuracy, implications, or relevance of those headings. Defendant denies that the Plaintiffs are entitled to the relief requested in the Complaint or to any other relief.

### **THE NATURE OF THE ACTION<sup>1</sup>**

1. IONpath denies that it has committed any actions of intentional interference with contractual relation or patent infringement. To the extent this paragraph includes any remaining factual allegations, IONpath denies such allegations.

2. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

3. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

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<sup>1</sup> IONpath has maintained the section headings from the Second Amended Complaint. To the extent any section headings contain an allegation of fact that should require an answer, IONpath denies that allegation.

1           4.     This paragraph includes subjective characterizations and assertions that do not require  
2 a response regarding. To the extent the paragraph includes factual allegations, IONpath admits that  
3 one or more IONpath founders were consultants for Fluidigm. Except as so expressly admitted,  
4 IONpath denies the remaining allegations of this paragraph.

5           5.     This paragraph includes subjective characterizations and assertions that do not require  
6 a response regarding. To the extent the paragraph includes factual allegations, IONpath admits that  
7 its counsel received a letter from Farella Braun + Martel dated September 24, 2018 which states on  
8 its face “re: IONpath Inc.’s Breach of Maxpar Limited License and Inducement of Customers’  
9 Breach of Maxpar Limited License.” Except as so expressly admitted, IONpath denies the  
10 remaining allegations of this paragraph.

11           6.     This paragraph includes subjective characterizations and assertions that do not require  
12 a response. To the extent the paragraph includes factual allegations, IONpath admits that a paper  
13 titled “A Structured Tumor-Immune Microenvironment in Triple Negative Breast Cancer Revealed  
14 by Multiplexed Ion Beam Imaging” published in Cell on September 6, 2018, and further admits  
15 that IONpath issued a press release on September 6, 2018 citing the Cell publication. IONpath  
16 further admits that its counsel received a letter from Farella Braun + Martel dated September 24,  
17 2018 which states on its face “re: IONpath Inc.’s Breach of Maxpar Limited License and Inducement  
18 of Customers’ Breach of Maxpar Limited License.” Except as so expressly admitted, IONpath  
19 denies the remaining allegations of this paragraph.

20           7.     This paragraph includes subjective characterizations and assertions that do not require  
21 a response. To the extent the paragraph includes factual allegations, IONpath admits that it  
22 announced the commercial launch of the MIBIScope on November 5, 2019. IONpath admits that it  
23 formally launched IONpath Research Services on February 11, 2020. IONpath admits that IONpath  
24 exhibited the MIBIScope at the 2019 Society for Immunotherapy of Cancer (SITC) Meeting. Except  
25 as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

26           8.     IONpath denies each and every allegation of this paragraph.

27           9.     IONpath denies each and every allegation of this paragraph.

28                   **THE PARTIES**

10. IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

11. IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

12. IONpath admits that it is a Delaware corporation with a place of business at 960 O'Brien Dr., Menlo Park, California 94025. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

## JURISDICTION AND VENUE

13. IONpath admits that Plaintiff purports to bring this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*, and for tortious interference under 28 U.S.C. § 1367(a), and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). IONpath denies that there is any basis for Plaintiff's Complaint. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

14. IONpath denies that it has committed any acts of patent infringement or tortious interference with contractual relations in this District or elsewhere. IONpath admits that it conducts business in this district. IONpath does not contest that this Court has personal jurisdiction over IONpath. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

15. IONpath denies that it has committed any acts of patent infringement or tortious interference with contractual relations in this District or elsewhere. IONpath admits that it conducts business in this district. IONpath does not contest that venue is proper in this district for this litigation. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

## BACKGROUND

## FLUIDIGM'S INDUSTRY LEADING ROLE IN MASS CYTOMETRY

16. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or

1 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
2 that basis, denies those allegations.

3 17. This paragraph includes subjective characterizations and assertions that do not require  
4 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
5 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
6 that basis, denies those allegations.

7 18. This paragraph includes subjective characterizations and assertions that do not require  
8 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
9 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
10 that basis, denies those allegations.

11 19. This paragraph includes subjective characterizations and assertions that do not require  
12 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
13 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
14 that basis, denies those allegations.

15 20. This paragraph includes subjective characterizations that do not require a response.  
16 To the extent the paragraph includes factual allegations, IONpath lacks knowledge or information  
17 sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis,  
18 denies those allegations.

19 21. This paragraph includes subjective characterizations and assertions that do not require  
20 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
21 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
22 that basis, denies those allegations.

23 22. This paragraph includes subjective characterizations and assertions that do not require  
24 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
25 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
26 that basis, denies those allegations.

27 23. This paragraph includes subjective characterizations and assertions that do not require  
28 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or

1 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
2 that basis, denies those allegations.

3 24. This paragraph includes subjective characterizations and assertions that do not require  
4 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
5 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
6 that basis, denies those allegations.

7 25. This paragraph includes subjective characterizations and assertions that do not require  
8 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
9 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
10 that basis, denies those allegations.

11 26. This paragraph includes subjective characterizations and assertions that do not require  
12 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
13 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
14 that basis, denies those allegations.

15 27. This paragraph includes subjective characterizations and assertions that do not require  
16 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
17 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
18 that basis, denies those allegations.

19 28. This paragraph includes subjective characterizations and assertions that do not require  
20 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
21 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
22 that basis, denies those allegations.

23 **FLUIDIGM'S ASSERTED PATENTS**

24 29. This paragraph includes subjective characterizations and assertions that do not require  
25 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
26 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
27 that basis, denies those allegations.  
28

**A. '386 Patent**

30. IONpath admits that U.S. Patent No. 10,180,386 is titled on its face “Mass spectrometry based multi-parametric particle analyzer,” and states on its face that it was assigned to “Fluidigm Corporation, South San Francisco, CA (US).” The ’386 patent states on its face that it was issued January 15, 2019. IONpath admits that the complaint purports to attach a true and correct copy of the ’386 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

31. IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

32. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath admits that the patent office issued the ’386 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

33. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath admits that this paragraph purports to quote claim 1 of the ’386 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

34. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath admits that this paragraph purports to quote claim 9 of the ’386 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

35. This paragraph includes subjective characterizations and assertions that do not require a response. IONpath admits that this paragraph purports to describe the subject matter of the ’386 patent. The patent speaks for itself. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

36. IONpath denies each and every allegation of this paragraph.

37. IONpath admits that it was made aware of the existence of the ’386 patent and Fluidigm’s assertion of infringement no later than September 23, 2019, when it was served with the

1 Original Complaint in this action. IONpath further admits it was served with the First Amended  
2 Complaint on October 11, 2019. IONpath denies that it has committed any acts that constitute  
3 infringement of the '386 patent. Except as so expressly admitted, IONpath denies the remaining  
4 allegations of this paragraph.

5 **B. '104 Patent**

6 38. IONpath admits that U.S. Patent No. 10,072,104 is titled on its face "Polymer  
7 Backbone Element Tags," and states on its face that it was assigned to "Fluidigm Canada Inc.,  
8 Markham (CA)." The '104 patent states on its face that it was issued September 11, 2018. IONpath  
9 admits that the complaint purports to attach a true and correct copy of the '104 patent. Except as so  
10 expressly admitted, IONpath denies the remaining allegations of this paragraph.

11 39. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations of this paragraph, and, on that basis, denies those allegations.

13 40. This paragraph includes subjective characterizations and assertions that do not require  
14 a response. To the extent the paragraph includes factual allegations, IONpath admits that the patent  
15 office issued the '104 patent. Except as so expressly admitted, IONpath denies the remaining  
16 allegations of this paragraph.

17 41. This paragraph includes subjective characterizations and assertions that do not require  
18 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
19 paragraph purports to quote claim 1 of the '104 patent. Except as so expressly admitted, IONpath  
20 denies the remaining allegations of this paragraph.

21 42. This paragraph includes subjective characterizations and assertions that do not require  
22 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
23 paragraph purports to quote claim 14 of the '104 patent. Except as so expressly admitted, IONpath  
24 denies the remaining allegations of this paragraph.

25 43. This paragraph includes subjective characterizations and assertions that do not require  
26 a response. IONpath admits that this paragraph purports to describe the subject matter of the '104  
27 patent. The patent speaks for itself. Except as so expressly admitted, IONpath denies the remaining  
28 allegations of this paragraph.



1           44. IONpath admits that its counsel received a letter from Farella Braun + Martel dated  
2           September 24, 2018 which states on its face “re: IONpath Inc.’s Breach of Maxpar Limited License  
3           and Inducement of Customers’ Breach of Maxpar Limited License.” IONpath admits that the  
4           September 24, 2018 letter identified the ’104 patent. Except as so expressly admitted, IONpath  
5           denies the remaining allegations of this paragraph.

6           45. IONpath admits that it was made aware of the existence of the ’104 patent and  
7           Fluidigm’s assertion of infringement no later than September 23, 2019, when it was served with the  
8           Original Complaint in this action. IONpath further admits it was served with the First Amended  
9           Complaint on October 11, 2019. IONpath denies that it has committed any acts that constitute  
10          infringement of the ’104 patent. Except as so expressly admitted, IONpath denies the remaining  
11          allegations of this paragraph.

12           **C.       ‘698 Patent**

13          46. IONpath admits that U.S. Patent No. 10,436,698 is titled on its face “Mass  
14          spectrometry based multi-parametric particle analyzer,” and states on its face that it was assigned to  
15          “Fluidigm Corporation, South San Francisco, CA (US).” The ’698 patent states on its face that it  
16          was issued January 15, 2019. IONpath admits that the complaint purports to attach a true and correct  
17          copy of the ’104 patent. Except as so expressly admitted, IONpath denies the remaining allegations  
18          of this paragraph.

19          47. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
20          the allegations of this paragraph, and, on that basis, denies those allegations.

21          48. This paragraph includes subjective characterizations and assertions that do not require  
22          a response. To the extent the paragraph includes factual allegations, IONpath admits that the patent  
23          office issued the ’698 patent. Except as so expressly admitted, IONpath denies the remaining  
24          allegations of this paragraph.

25          49. This paragraph includes subjective characterizations and assertions that do not require  
26          a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
27          paragraph purports to quote claim 1 of the ’698 patent. Except as so expressly admitted, IONpath  
28          denies the remaining allegations of this paragraph.

1           50. IONpath admits that this paragraph purports to quote claim 6 of the '698 patent.  
2 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

3           51. This paragraph includes subjective characterizations and assertions that do not require  
4 a response. IONpath admits that this paragraph purports to describe the subject matter of the '698  
5 patent. The patent speaks for itself. Except as so expressly admitted, IONpath denies the remaining  
6 allegations of this paragraph.

7           52. IONpath denies each and every allegation of this paragraph.

8           53. IONpath admits that it was made aware of the existence of the '698 patent and  
9 Fluidigm's assertion of infringement no later than October 11, 2019, when it was served with the  
10 Second Amended Complaint in this action. IONpath denies that it has committed any acts that  
11 constitute infringement of the '698 patent. Except as so expressly admitted, IONpath denies the  
12 remaining allegations of this paragraph.

### 13                           **FLUIDIGM CONSULTANTS FORM IONPATH**

#### 14           ***A. Dr. Garry Nolan***

15           54. IONpath admits that a publication titled "Multiplexed ion beam imaging (MIBI) of  
16 human breast tumors" published in 2014 in Nature Medicine, and included among its authors  
17 Michael Angelo, Sean Bendall, and Garry Nolan. This publication speaks for itself. Except as so  
18 expressly admitted, IONpath denies the remaining allegations of this paragraph.

19           55. IONpath admits that this paragraph purports to quote from a consulting agreement  
20 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
21 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
22 the allegations of this paragraph, and, on that basis, denies those allegations.

23           56. IONpath admits that this paragraph purports to quote from a consulting agreement  
24 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
25 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
26 the allegations of this paragraph, and, on that basis, denies those allegations.

1           57. IONpath admits that this paragraph purports to describe a consulting agreement  
2 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
3 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
4 the allegations of this paragraph, and, on that basis, denies those allegations.

5           58. IONpath admits that this paragraph purports to describe a consulting agreement  
6 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
7 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
8 the allegations of this paragraph, and, on that basis, denies those allegations.

9           59. IONpath admits that this paragraph purports to describe a consulting agreement  
10 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
11 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations of this paragraph, and, on that basis, denies those allegations.

13           60. IONpath admits that this paragraph purports to describe a consulting agreement  
14 purportedly entered into between Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the  
15 agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
16 the allegations of this paragraph, and, on that basis, denies those allegations.

17           61. IONpath admits that this paragraph purports to describe work conducted under a  
18 consulting agreement purportedly entered into between Fluidigm and Dr. Nolan, and purported  
19 interactions between Dr. Nolan and Fluidigm. IONpath is not alleged to be party to the agreement  
20 or those interactions. IONpath lacks knowledge or information sufficient to form a belief about the  
21 truth of the allegations of this paragraph, and, on that basis, denies those allegations.

22           62. IONpath admits that IONpath was founded on September 16, 2014. IONpath admits  
23 that Drs. Angelo, Bendall, Fienberg, and Nolan are the founders of IONpath. IONpath admits that  
24 this paragraph purports to describe a consulting agreement purportedly entered into between  
25 Fluidigm and Dr. Nolan. IONpath is not alleged to be party to the agreement. IONpath lacks  
26 knowledge or information sufficient to form a belief about the truth of allegations regarding the  
27 purported agreement, and on that basis denies those allegations. Except as so expressly admitted,  
28 IONpath denies the remaining allegations of this paragraph.

1           63. IONpath admits that Dr. Nolan is a co-founder of IONpath. To the extent this  
2 paragraph purports to describe Dr. Nolan's conduct in his individual capacity, IONpath lacks  
3 knowledge or information sufficient to form a belief about the truth of the allegations of this  
4 paragraph, and, on that basis, denies those allegations. IONpath denies that the MIBIScope  
5 technology is infringing Fluidigm's asserted patents. Except as so expressly admitted, IONpath  
6 denies the remaining allegations of this paragraph.

7           **B. Dr. Sean Bendall**

8           64. IONpath admits that Dr. Sean Bendall is a co-founder of IONpath. IONpath admits  
9 that IONpath was founded in September 2014. IONpath admits that Dr. Sean Bendall is currently  
10 a member of IONpath's Board of Directors. IONpath admits that this paragraph purports to describe  
11 a consulting agreement purportedly entered into between Fluidigm and Dr. Bendall. IONpath is not  
12 alleged to be party to the agreement. IONpath lacks knowledge or information sufficient to form a  
13 belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.  
14 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

15           65. IONpath admits that this paragraph purports to quote from a consulting agreement  
16 purportedly entered into between Fluidigm and Dr. Bendall. IONpath is not alleged to be party to  
17 the agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth  
18 of the allegations of this paragraph, and, on that basis, denies those allegations.

19           66. IONpath admits that this paragraph purports to quote from a consulting agreement  
20 purportedly entered into between Fluidigm and Dr. Bendall. IONpath is not alleged to be party to  
21 the agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth  
22 of the allegations of this paragraph, and, on that basis, denies those allegations.

23           67. IONpath admits that this paragraph purports to quote from a consulting agreement  
24 purportedly entered into between Fluidigm and Dr. Bendall. IONpath is not alleged to be party to  
25 the agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth  
26 of the allegations of this paragraph, and, on that basis, denies those allegations.

27           68. IONpath admits that this paragraph purports to quote from a consulting agreement  
28 purportedly entered into between Fluidigm and Dr. Bendall. IONpath is not alleged to be party to

1 the agreement. IONpath lacks knowledge or information sufficient to form a belief about the truth  
2 of the allegations of this paragraph, and, on that basis, denies those allegations.

3 69. IONpath admits that this paragraph purports to describe interactions between  
4 Fluidigm and Dr. Bendall regarding a consulting agreement purportedly entered into between  
5 Fluidigm and Dr. Bendall. IONpath is not alleged to be party to the agreement. IONpath lacks  
6 knowledge or information sufficient to form a belief about the truth of the allegations of this  
7 paragraph, and, on that basis, denies those allegations.

8 70. IONpath admits that Dr. Bendall is a co-founder of IONpath. To the extent this  
9 paragraph purports to describe Dr. Bendall's conduct in his individual capacity, IONpath lacks  
10 knowledge or information sufficient to form a belief about the truth of the allegations of this  
11 paragraph, and, on that basis, denies those allegations. IONpath denies that the MIBIScope  
12 technology is infringing Fluidigm's asserted patents. Except as so expressly admitted, IONpath  
13 denies the remaining allegations of this paragraph.

14 **IONPATH'S MARKETING AND SALE OF ITS INFRINGING TECHNOLOGY**

15 71. IONpath denies each and every allegation of this paragraph.

16 72. IONpath denies each and every allegation of this paragraph.

17 73. This paragraph includes subjective characterizations and assertions that do not require  
18 a response. To the extent the paragraph includes factual allegations, IONpath admits that the patent  
19 office issued the '104, '386, and '698 patents. The patents speak for themselves. Except as so  
20 expressly admitted, IONpath denies the remaining allegations of this paragraph.

21 74. This paragraph includes subjective characterizations and assertions that do not require  
22 a response. To the extent the paragraph includes factual allegations, IONpath admits that it had  
23 begun using and offering its MIBIScope for sale to potential customers as early as December 2017.  
24 IONpath admits that the commercial launch of the MIBIScope was in November 2019. IONpath  
25 admits that it offered to sell the MIBIScope to its customers for over \$1,000,000. Except as so  
26 expressly admitted, IONpath denies the remaining allegations of this paragraph.  
27  
28

1           75. IONpath admits that IONpath customers had purchaed the MIBIscope as of 2017.  
2 IONpath admits that the first MIBIscope offered for sale was installed in the laboratory of Dr. Garry  
3 Nolan at Stanford University. IONpath further admits that the MIBIscope installed in the laboratory  
4 of Dr. Garry Nolan was acquired prior to the commercial launch of the MIBIscope. Except as so  
5 expressly admitted, IONpath denies the remaining allegations of this paragraph.

6           76. IONpath denies each and every allegation of this paragraph.

7           77. This paragraph includes subjective characterizations and assertions that do not require  
8 a response. To the extent the paragraph includes factual allegations, IONpath admits that it received  
9 a letter from Fluidigm dated February 7, 2018. IONpath admits that the February 7, 2018 letter  
10 purports to attach Fluidigm's "Sales and License Terms and Conditions." The letter speaks for  
11 itself. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

12           78. This paragraph includes subjective characterizations and assertions that do not require  
13 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
14 paragraph quotes from the February 7, 2018 letter. The letter speaks for itself. Except as so  
15 expressly admitted, IONpath denies the remaining allegations of this paragraph.

16           79. This paragraph includes subjective characterizations and assertions that do not require  
17 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
18 paragraph refers to the February 7, 2018 letter. The letter speaks for itself. Except as so expressly  
19 admitted, IONpath denies the remaining allegations of this paragraph.

20           80. This paragraph includes subjective characterizations and assertions that do not require  
21 a response. To the extent the paragraph includes factual allegations, IONpath admits that it sent a  
22 letter to Fluidigm dated February 21, 2018 and that IONpath's counsel set a letter to Fluidigm dated  
23 March 7, 2018. Those letters speak for themselves. To the extent this paragraph purports to describe  
24 Dr. Bendall's conduct in his individual capacity, IONpath lacks knowledge or information sufficient  
25 to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those  
26 allegations. Except as so expressly admitted, IONpath denies the remaining allegations of this  
27 paragraph.

1           81. This paragraph includes subjective characterizations that do not require a response.  
2 To the extent the paragraph includes factual allegations, IONpath lacks knowledge or information  
3 sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis,  
4 denies those allegations.

5           82. This paragraph includes subjective characterizations that do not require a response.  
6 To the extent the paragraph includes factual allegations, IONpath admits that the 2018 paper  
7 published in Cell titled “A Structured Tumor-Immune Microenvironment in Triple Negative Breast  
8 Cancer Revealed by Multiplexed Ion Beam Imaging” states that it was “Received: April 16, 2018,”  
9 and that its authors include Dr. Bendall and Dr. Angelo. IONpath admits that the Cell paper lists  
10 under “Critical Commercial Assays” the “Maxpar X8 Antibody labeling kit.” To the extent this  
11 paragraph purports to describe Dr. Bendall’s or Dr. Angelo’s conduct in their individual capacity,  
12 IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations  
13 of this paragraph, and, on that basis, denies those allegations. Except as so expressly admitted,  
14 IONpath denies the remaining allegations of this paragraph.

15           83. IONpath denies each and every allegation of this paragraph.

16           84. This paragraph includes subjective characterizations that do not require a response.  
17 To the extent the paragraph includes factual allegations, IONpath admits that an article titled  
18 “Multiplexed Single-cell Metabolic Profiles Organize the Spectrum of Cytotoxic Human T Cells”  
19 was published on bioRxiv, and its authors included Michael Angelo and Sean Bendall. The  
20 paragraph purports to quote from the article. The article speaks for itself. IONpath admits that Dr.  
21 Angelo and Dr. Bendall are identified in the 2020 Article as being affiliated with Stanford  
22 University. To the extent this paragraph purports to describe Dr. Bendall’s or Dr. Angelo’s conduct  
23 in their individual capacity, IONpath lacks knowledge or information sufficient to form a belief  
24 about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.  
25 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

26           85. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
27 the allegations of this paragraph, and, on that basis, denies those allegations.  
28



1           86. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
2 the allegations of this paragraph, and, on that basis, denies those allegations.

3           87. To the extent this paragraph purports to describe what the identified parties would or  
4 would not have done, IONpath lacks knowledge or information sufficient to form a belief about the  
5 truth of the allegations of this paragraph, and, on that basis, denies those allegations. IONpath  
6 denies that it encouraged any individual or entity to breach any agreement with Fluidigm. Except  
7 as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

8           ***C. IONpath announces its infringing MIBIScope technology in 2018***

9           88. This paragraph includes subjective characterizations and assertions that do not require  
10 a response. To the extent the paragraph includes factual allegations, IONpath admits that it issued  
11 a press release dated September 6, 2018 that cited the 2018 publication in *Cell*. The press release  
12 speaks for itself. Except as so expressly admitted, IONpath denies the remaining allegations of this  
13 paragraph.

14           89. IONpath admits that this paragraph purports to quote from and characterize the press  
15 release. The press release speaks for itself. Except as so expressly admitted, IONpath denies the  
16 remaining allegations of this paragraph.

17           90. IONpath admits that this paragraph purports to quote from and characterize the press  
18 release. The press release speaks for itself. Except as so expressly admitted, IONpath denies the  
19 remaining allegations of this paragraph.

20           91. IONpath admits that the publication “A Structured Tumor-Immune  
21 Microenvironment in Triple Negative Breast Cancer Revealed by Multiplexed Ion Beam Imaging”  
22 was published in *Cell* in 2018. IONpath admits that this paragraph purports to quote from the 2018  
23 *Cell* article. The article speaks for itself. Except as so expressly admitted, IONpath denies the  
24 remaining allegations of this paragraph.

25           92. IONpath admits that the publication “A Structured Tumor-Immune  
26 Microenvironment in Triple Negative Breast Cancer Revealed by Multiplexed Ion Beam Imaging”  
27 was published in *Cell* in 2018. To the extent the paragraph includes factual allegations, IONpath  
28



1 admits that this paragraph purports to quote from the 2018 *Cell* article. The article speaks for itself.  
2 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

3 93. IONpath admits that the publication “A Structured Tumor-Immune  
4 Microenvironment in Triple Negative Breast Cancer Revealed by Multiplexed Ion Beam Imaging”  
5 was published in *Cell* in 2018. IONpath admits that this paragraph purports to quote from the 2018  
6 *Cell* article. The article speaks for itself. Except as so expressly admitted, IONpath denies the  
7 remaining allegations of this paragraph.

8 94. IONpath admits that it provided a brochure on its website titled “MIBIScope I:  
9 Multiplexed Tissue Imaging that Transforms Discovery.” IONpath admits that this paragraph  
10 purports to quote from the brochure. The brochure speaks for itself. Except as so expressly  
11 admitted, IONpath denies the remaining allegations of this paragraph.

12 95. IONpath admits that it provided a brochure on its website titled “MIBIScope I:  
13 Multiplexed Tissue Imaging that Transforms Discovery.” IONpath admits that the brochure  
14 includes images that were generated using the MIBIScope. IONpath admits that this paragraph  
15 purports to characterize the brochure. The brochure speaks for itself. Except as so expressly  
16 admitted, IONpath denies the remaining allegations of this paragraph.

17 96. This paragraph includes subjective characterizations and assertions that do not require  
18 a response. To the extent the paragraph includes factual allegations, IONpath admits that the  
19 paragraph purports to refer to IONpath brochure and Safety Data Sheets for MIBItag Conjugation  
20 Kits. The documents speak for themselves. IONpath admits the IONpath Safety Data Sheets for  
21 the MIBItag Conjugation Kits describe the use of lanthanides and the use of polymers. Except as  
22 so expressly admitted, IONpath denies the remaining allegations of this paragraph.

23 97. This paragraph includes subjective characterizations and assertions that do not require  
24 a response. To the extent the paragraph includes factual allegations, IONpath admits that the  
25 IONpath website previously described a “Pharma Partnership.” IONpath admits that its website  
26 advertised “tissue staining, imaging and scanning.” Except as so expressly admitted, IONpath  
27 denies the remaining allegations of this paragraph.

28

1           98. IONpath admits that an article published September 18, 2018 stated plans to launch a  
2 commercial version of the MIBIScope in 2019. IONpath denies infringement. Except as so  
3 expressly admitted, IONpath denies the remaining allegations of this paragraph.

4           99. This paragraph includes subjective characterizations and assertions that do not require  
5 a response. To the extent the paragraph includes factual allegations, IONpath admits that its counsel  
6 received a letter from Farella Braun + Martel dated September 24, 2018 which states on its face “re:  
7 IONpath Inc.’s Breach of Maxpar Limited License and Inducement of Customers’ Breach of Maxpar  
8 Limited License.” Except as so expressly admitted, IONpath denies the remaining allegations of  
9 this paragraph.

10           100. IONpath admits that the letter dated September 24, 2018 identified the ’104 patent.  
11 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

12           101. This paragraph includes subjective characterizations and assertions that do not require  
13 a response. To the extent the paragraph includes factual allegations, IONpath admits that an article  
14 titled “MIBI-TOF: A Multiplexed Imaging Platform Relates Cellular Phenotypes and Tissue  
15 Structure” published in *Science Advances* in 2019. IONpath admits the 2019 article describes  
16 results obtained with a MIBIScope. IONpath admits that it was served with the Original Complaint  
17 in this action on September 23, 2019. IONpath further admits it was served with the First Amended  
18 Complaint on October 11, 2019. IONpath denies that it has committed any acts that constitute  
19 infringement of the asserted patents. Except as so expressly admitted, IONpath denies the remaining  
20 allegations of this paragraph.

21           102. IONpath denies each and every allegation of this paragraph.

22           103. This paragraph includes subjective characterizations and assertions that do not require  
23 a response. To the extent the paragraph includes factual allegations, IONpath admits that IONpath  
24 admits that an article titled “Immune Monitoring Using Mass Cytometry and Related High-  
25 Dimensional Imaging Approaches” was published in *Nature Reviews* in 2020. IONpath admits that  
26 the 2020 paper included among its authors Dr. Bendall. IONpath admits that the 2020 paper  
27 published online on December 31, 2019. IONpath admits that the 2020 paper describes the  
28

1 multiplexed ion beam imaging and imaging mass cytometry. The 2020 paper speaks for itself.  
2 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

3 104. IONpath denies each and every allegation of this paragraph.

4 **IONPATH'S IMPROPER AND INFRINGING COMMERCIAL ACTIVITY**

5 105. This paragraph includes subjective characterizations and assertions that do not require  
6 a response. To the extent the paragraph includes factual allegations, IONpath lacks knowledge or  
7 information sufficient to form a belief about the truth of the allegations of this paragraph, and, on  
8 that basis, denies those allegations.

9 106. IONpath admits that as of August 2019 it had sold at least six MIBIScope devices.  
10 IONpath admits that as of August 2019 IONpath had advertised MIBItags on its website and in  
11 brochures. Except as so expressly admitted, IONpath denies the remaining allegations of this  
12 paragraph.

13 107. This paragraph includes subjective characterizations and assertions that do not require  
14 a response. To the extent the paragraph includes factual allegations, IONpath denies that it has sold  
15 at least 4 MIBIScope devices between August 2019 and January 31, 2020. Except as so expressly  
16 admitted, IONpath denies the remaining allegations of this paragraph.

17 108. This paragraph includes subjective characterizations and assertions that do not require  
18 a response. To the extent the paragraph includes factual allegations, IONpath admits that it  
19 announced the commercial launch of the MIBIScope on the IONpath website on November 5, 2019.  
20 IONpath admits that it released a press release on November 5, 2019 titled "IONpath Announces  
21 Commercial Launch of MIBIScope™—the First Multiplexed Ion Beam Imaging System." This  
22 paragraph purports to quote from the press release. The press release speaks for itself. Except as  
23 so expressly admitted, IONpath denies the remaining allegations of this paragraph.

24 109. This paragraph includes subjective characterizations and assertions that do not require  
25 a response. To the extent the paragraph includes factual allegations, IONpath admits that it  
26 exhibited the MIBIScope at the 2019 SITC Meeting. IONpath admits that it provided brochures that  
27 stated "now commercially available." IONpath admits that the brochures were placed in conference  
28

1 registration bags. IONpath admits that several presentations regarding the use of the MIBIScope  
2 were made at the conference. IONpath admits that it had an informational booth at SITC. Except  
3 as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

4 110. This paragraph includes subjective characterizations and assertions that do not require  
5 a response. To the extent the paragraph includes factual allegations, IONpath admits that  
6 presentations were made at the 2019 SITC Meeting by Dana-Farber Cancer Institute, Stanford  
7 University, and the University of Colorado, Denver regarding the use of the MIBIScope. IONpath  
8 admits that the November 5, 2019 press release regarding the commercial launch of the MIBIScope  
9 referenced the 2019 SITC meeting. IONpath admits that the November 5, 2019 press release  
10 regarding the commercial launch of the MIBIScope stated that “To learn about the MIBIScope, visit  
11 IONpath at SITC booth #326, or attend the company’s symposium on Saturday, November 9 at  
12 12:35 pm in Riverview Ballroom A3, where leading researchers from the Dana-Farber Cancer  
13 Institute, Stanford University, and University of Colorado, Denver, will be presenting their research  
14 using the MIBIScope to characterize the tumor microenvironment.” Except as so expressly  
15 admitted, IONpath denies the remaining allegations of this paragraph.

16 111. This paragraph includes subjective characterizations and assertions that do not require  
17 a response. To the extent the paragraph includes factual allegations, IONpath admits that the 2019  
18 SITC Meeting included a symposium workshop titled “Immune Profiling of Clinical Cohort  
19 Samples Using Highly Multiplexed Ion Beam Imaging (MIBI) Technology to Characterize Spatial  
20 Organization in the Tumor Microenvironment” with a panel that included Dr. Angelo and Dr.  
21 Fienberg. IONpath admits that this was advertised as a lunch event. IONpath admits that Dr.  
22 Angelo described the function and operation of the MIBIScope. Except as so expressly admitted,  
23 IONpath denies the remaining allegations of this paragraph.

24 112. IONpath admits that at the 2019 Symposium, presenters from the Dana-Farber Cancer  
25 Institute and University of Colorado, Denver described their use of the MIBIScope, including the  
26 receipt of technical support from IONpath in use of the MIBIScope. IONpath admits that the  
27 researcher from the Dana-Farber Cancer Institute described the use of a biomarker panel. Except  
28 as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

1 113. IONpath admits that at the 2019 Symposium, the presenter from the University of  
2 Colorado, Denver described the use of the MIBIScope. The paragraph purports to quote from a  
3 listed website. The website speaks for itself. Except as so expressly admitted, IONpath denies the  
4 remaining allegations of this paragraph.

5 114. IONpath denies each and every allegation of this paragraph.

6 115. IONpath denies each and every allegation of this paragraph.

7 116. This paragraph includes subjective characterizations and assertions that do not require  
8 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
9 paragraph purports to quote from the 2020 *Nature Reviews* article and the 2019 *Science Advances*  
10 article. Those articles speak for themselves. Except as so expressly admitted, IONpath denies the  
11 remaining allegations of this paragraph.

12 117. This paragraph includes subjective characterizations and assertions that do not require  
13 a response. To the extent the paragraph includes factual allegations, IONpath admits that this  
14 paragraph purports to quote from the 2020 *Nature Reviews* article. The article speaks for itself.  
15 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

16 118. This paragraph includes subjective characterizations and assertions that do not require  
17 a response. To the extent the paragraph includes factual allegations, IONpath admits that the 2020  
18 *Nature Reviews* article was published more than two months after the service of the First Amended  
19 Complaint. Except as so expressly admitted, IONpath denies the remaining allegations of this  
20 paragraph.

21 119. This paragraph includes subjective characterizations and assertions that do not require  
22 a response. To the extent the paragraph includes factual allegations, IONpath admits that that on  
23 February 11, 2020 it stated in a press release “IONpath, Inc., today announces the launch of a  
24 dedicated service business providing access to their proprietary MIBIScope™ multiplexed imaging  
25 platform and its team of experts to support pharmaceutical and biotechnology companies working  
26 in immuno-oncology. IONpath has previously provided custom research services to leading  
27 academic and pharmaceutical organizations as part of an Early Access Program. Now the company  
28 has formalized its intentions to become a partner of choice to those interrogating the tumor

1 microenvironment to understand therapeutic mechanism of action and identify responder  
2 populations.” Except as so expressly admitted, IONpath denies the remaining allegations of this  
3 paragraph.

4 120. IONpath denies each and every allegation of this paragraph.

5 **COUNT I**  
6 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

7 121. This paragraph does not contain an allegation of fact, and, therefore, no answer is  
8 required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth  
9 herein. Except as so expressly admitted, IONpath denies the remaining allegations of this  
10 paragraph.

11 122. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
12 the allegations of this paragraph, and, on that basis, denies those allegations.

13 123. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
14 the allegations of this paragraph, and, on that basis, denies those allegations.

15 124. IONpath admits that it received a letter dated February 7, 2018 on its face, and  
16 enclosed what purports to be on its face Fluidigm “Sales and License Terms and Conditions.”  
17 IONpath admits that this paragraph purports to quote a section of the February 7, 2018 letter. The  
18 letter speaks for itself. IONpath admits that the letter states that “IONpath’s actions interfere with  
19 our customer relationships and violate Fluidigm’s Ts&Cs, most directly subsection (iv) in Section  
20 3.2.” Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

21 125. IONpath denies each and every allegation of this paragraph.

22 126. IONpath denies each and every allegation of this paragraph.

23 127. IONpath denies each and every allegation of this paragraph.

24 128. IONpath denies that it has induced or encouraged any individual or entity to breach  
25 any agreement with Fluidigm. To the extent this paragraph makes allegations about what IONpath’s  
26 customers did or did not do, IONpath lacks knowledge or information sufficient to form a belief  
27 about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

129. IONpath denies that it has induced or encouraged any individual or entity to breach any agreement with Fluidigm. To the extent this paragraph makes allegations about what IONpath's customers would or would not have done, IONpath lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph, and, on that basis, denies those allegations.

130. IONpath denies each and every allegation of this paragraph.

131. IONpath denies each and every allegation of this paragraph.

**COUNT II**  
**DIRECT PATENT INFRINGEMENT**  
**(THE '386 PATENT)**

132. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

133. IONpath admits that the '386 patent states on its face that it was issued January 15, 2019. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

134. IONpath admits that the '386 patent states on its face that it is assigned to Fluidigm Corporation. IONpath lacks knowledge or information sufficient to form a belief about the truth of any remaining allegations of this paragraph, and, on that basis, denies those allegations.

135. IONpath denies each and every allegation of this paragraph.

136. IONpath admits that the quotations in this paragraph appear in the referenced article. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

137. IONpath admits that the quotations in this paragraph appear in the referenced brochure. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

138. IONpath admits that the quotations in this paragraph appear in the referenced release. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.



139. IONpath admits that it has offered MIBItags for sale. IONpath admits that the quotations in this paragraph appear in the referenced Article. IONpath denies that the MIBItags infringe any patent-in-suit. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

140. IONpath denies each and every allegation of this paragraph.

141. IONpath admits that the chart in this paragraph recites the elements of claim 9 of the '386 patent and Fluidigm's allegations with respect to infringement of those elements by IONpath Activities. IONpath denies that it infringes any claim of the '386 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

142. IONpath denies each and every allegation of this paragraph.

143. IONpath denies each and every allegation of this paragraph.

144. IONpath denies each and every allegation of this paragraph.

**COUNT III**  
**INDIRECT PATENT INFRINGEMENT**  
**(The '386 Patent)**

145. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

146. IONpath denies each and every allegation of this paragraph.

147. IONpath denies each and every allegation of this paragraph.

148. IONpath admits that it had actual notice of the '386 patent as of the date it was served with the original Complaint in this lawsuit. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

149. IONpath admits that it announced the commercial launch of the MIBIScope on November 5, 2019. IONpath admits that the quotations in this paragraph appear in the referenced press release. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.



150. IONpath admits that it sold the MIBIScope to third-parties after the commercial launch of the MIBIScope. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

151. IONpath admits that IONpath exhibited the MIBIScope at the 2019 SITC Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

152. IONpath admits that the quotations in this paragraph appear in the referenced article. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

153. IONpath admits that the quotations in this paragraph appear in the referenced article. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

154. IONpath denies each and every allegation of this paragraph.

155. IONpath denies each and every allegation of this paragraph.

156. IONpath denies each and every allegation of this paragraph.

157. IONpath denies each and every allegation of this paragraph.

158. IONpath denies each and every allegation of this paragraph.

159. IONpath denies each and every allegation of this paragraph.

**COUNT IV**  
**CONTRIBUTORY PATENT INFRINGEMENT**  
**(The '386 Patent)**

160. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

161. IONpath denies each and every allegation of this paragraph.

162. IONpath denies each and every allegation of this paragraph.

163. IONpath admits that it announced the commercial launch of the MIBIScope on November 5, 2019. IONpath admits that IONpath exhibited the MIBIScope at the 2019 SITC Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

164. This paragraph includes subjective characterizations and assertions that do not require a response. To the extent the paragraph includes factual allegations, IONpath admits that the MIBIScope system utilizes Secondary Ion Mass Spectrometry (SIMS) and enables simultaneous imaging of 40+ markers with the throughput needed for large cohort studies and the sensitivity to detect low-abundance targets. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

165. IONpath denies each and every allegation of this paragraph.

166. IONpath denies each and every allegation of this paragraph.

167. IONpath denies each and every allegation of this paragraph.

168. IONpath denies each and every allegation of this paragraph.

169. IONpath denies each and every allegation of this paragraph.

**COUNT V**  
**DIRECT PATENT INFRINGEMENT**  
**(The '104 Patent)**

170. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

171. IONpath admits that the '104 patent states on its face that it was issued September 11, 2018.

172. IONpath admits that the '104 patent states on its face that it is assigned to Fluidigm Canada Inc. IONpath lacks knowledge or information sufficient to form a belief about the truth of any remaining allegations of this paragraph, and, on that basis, denies those allegations.

173. IONpath denies each and every allegation of this paragraph.

174. IONpath denies each and every allegation of this paragraph.

175. IONpath admits that the quotations in this paragraph appear in the referenced article. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

176. IONpath admits that it announced the commercial launch of the MIBIscope on November 5, 2019. IONpath admits that the quotations in this paragraph appear in the referenced release. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

177. IONpath denies each and every allegation of this paragraph.

178. IONpath admits that the chart in this paragraph recites the elements of claim 14 of the '104 patent and Fluidigm's allegations with respect to infringement of those elements by IONpath Activities. IONpath denies that it infringes any claim of the '104 patent. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

179. IONpath denies each and every allegation of this paragraph.

180. IONpath denies each and every allegation of this paragraph.

181. IONpath denies each and every allegation of this paragraph.

**COUNT VI**  
**INDIRECT PATENT INFRINGEMENT**  
**(The '104 Patent)**

182. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

183. IONpath denies each and every allegation of this paragraph.

184. IONpath denies each and every allegation of this paragraph.

185. IONpath admits that it had actual notice of the '104 patent as of the date it was served with the original Complaint in this lawsuit. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

186. IONpath admits that it announced the commercial launch of the MIBIscope on November 5, 2019. IONpath admits that the quotations in this paragraph appear in the referenced press release. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

1 187. IONpath admits that it sold the MIBIScope to third-parties after the commercial launch  
2 of the MIBIScope. Except as so expressly admitted, IONpath denies the remaining allegations of  
3 this paragraph.

4 188. IONpath admits that IONpath admits that IONpath exhibited the MIBIScope at the  
5 2019 SITC Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of  
6 this paragraph.

7 189. IONpath admits that the quotations in this paragraph appear in the referenced article.  
8 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

9 190. IONpath denies each and every allegation of this paragraph.

10 191. IONpath denies each and every allegation of this paragraph.

11 192. IONpath denies each and every allegation of this paragraph.

12 193. IONpath denies each and every allegation of this paragraph.

13  
14 **COUNT VII**  
**CONTRIBUTORY PATENT INFRINGEMENT**  
15 **(The '104 Patent)**

16 194. This paragraph does not contain an allegation of fact, and, therefore, no answer is  
17 required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth  
18 herein. Except as so expressly admitted, IONpath denies the remaining allegations of this  
19 paragraph.

20 195. IONpath denies each and every allegation of this paragraph.

21 196. IONpath denies each and every allegation of this paragraph.

22 197. IONpath admits that it announced the commercial launch of the MIBIScope on  
23 November 5, 2019. IONpath admits that IONpath exhibited the MIBIScope at the 2019 SITC  
24 Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of this  
25 paragraph.

26 198. IONpath admits that the MIBIScope system utilizes Secondary Ion Mass Spectrometry  
27 (SIMS) and enables simultaneous imaging of 40+ markers with the throughput needed for large  
28

1 cohort studies and the sensitivity to detect low-abundance targets. Except as so expressly admitted,  
2 IONpath denies the remaining allegations of this paragraph.

3 199. IONpath denies each and every allegation of this paragraph.

4 200. IONpath denies each and every allegation of this paragraph.

5 201. IONpath denies each and every allegation of this paragraph.

6 202. IONpath denies each and every allegation of this paragraph.

7 203. IONpath denies each and every allegation of this paragraph.

8 **COUNT VIII**  
9 **DIRECT PATENT INFRINGEMENT**  
10 **(The '698 Patent)**

11 204. This paragraph does not contain an allegation of fact, and, therefore, no answer is  
12 required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth  
13 herein. Except as so expressly admitted, IONpath denies the remaining allegations of this  
14 paragraph.

15 205. IONpath admits that the '698 patent states on its face that it was issued October 8,  
16 2019.

17 206. IONpath admits that the '698 patent states on its face that it is assigned to Fluidigm  
18 Corporation. IONpath lacks knowledge or information sufficient to form a belief about the truth of  
19 any remaining allegations of this paragraph, and, on that basis, denies those allegations.

20 207. IONpath denies each and every allegation of this paragraph.

21 208. IONpath admits that the quotations in this paragraph appear in the referenced article.  
22 Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

23 209. IONpath admits that the quotations in this paragraph appear in the referenced  
24 brochure. Except as so expressly admitted, IONpath denies the remaining allegations of this  
25 paragraph.

26 210. IONpath admits that it announced the commercial launch of the MIBIScope on  
27 November 5, 2019. IONpath admits that the quotations in this paragraph appear in the referenced  
28 release. Except as so expressly admitted, IONpath denies the remaining allegations of this  
paragraph.

1 211. IONpath denies each and every allegation of this paragraph.

2 212. IONpath denies each and every allegation of this paragraph.

3 213. IONpath admits that the chart in this paragraph recites the elements of claim 6 of the  
4 '698 patent and Fluidigm's allegations with respect to infringement of those elements by IONpath  
5 Activities. IONpath denies that it infringes any claim of the '698 patent. Except as so expressly  
6 admitted, IONpath denies the remaining allegations of this paragraph.

7 214. IONpath denies each and every allegation of this paragraph.

8 215. IONpath denies each and every allegation of this paragraph.

9 216. IONpath denies each and every allegation of this paragraph.

10 **COUNT IX**  
11 **INDIRECT PATENT INFRINGEMENT**  
**(The '698 Patent)**

12 217. This paragraph does not contain an allegation of fact, and, therefore, no answer is  
13 required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth  
14 herein. Except as so expressly admitted, IONpath denies the remaining allegations of this  
15 paragraph.

16 218. IONpath denies each and every allegation of this paragraph.

17 219. IONpath denies each and every allegation of this paragraph.

18 220. IONpath admits that it had actual notice of the '698 patent as of the date it was served  
19 with the First Amended Complaint in this lawsuit. Except as so expressly admitted, IONpath denies  
20 the remaining allegations of this paragraph.

21 221. IONpath admits that it announced the commercial launch of the MIBIScope on  
22 November 5, 2019. IONpath admits that the quotations in this paragraph appear in the referenced  
23 press release. Except as so expressly admitted, IONpath denies the remaining allegations of this  
24 paragraph.

25 222. IONpath admits that it sold the MIBIScope to third-parties after the commercial launch  
26 of the MIBIScope. Except as so expressly admitted, IONpath denies the remaining allegations of  
27 this paragraph.  
28

223. IONpath admits that IONpath exhibited the MIBIScope at the 2019 SITC Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

224. IONpath admits that the quotations in this paragraph appear in the referenced article. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

225. IONpath admits it offers for sale the MIBItag reagents. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

226. IONpath denies each and every allegation of this paragraph.

227. IONpath denies each and every allegation of this paragraph.

228. IONpath denies each and every allegation of this paragraph.

229. IONpath denies each and every allegation of this paragraph.

230. IONpath denies each and every allegation of this paragraph.

231. IONpath denies each and every allegation of this paragraph.

**COUNT X**  
**CONTRIBUTORY PATENT INFRINGEMENT**  
**(The '698 Patent)**

232. This paragraph does not contain an allegation of fact, and, therefore, no answer is required. IONpath incorporates its responses to all preceding paragraphs as though fully set forth herein. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

233. IONpath denies each and every allegation of this paragraph.

234. IONpath denies each and every allegation of this paragraph.

235. IONpath admits that it announced the commercial launch of the MIBIScope on November 5, 2019. IONpath admits that IONpath exhibited the MIBIScope at the 2019 SITC Meeting. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

236. IONpath admits that the MIBIScope system utilizes Secondary Ion Mass Spectrometry (SIMS) and enables simultaneous imaging of 40+ markers with the throughput needed for large cohort studies and the sensitivity to detect low-abundance targets. Except as so expressly admitted, IONpath denies the remaining allegations of this paragraph.

1 237. IONpath denies each and every allegation of this paragraph.

2 238. IONpath denies each and every allegation of this paragraph.

3 239. IONpath denies each and every allegation of this paragraph.

4 240. IONpath denies each and every allegation of this paragraph.

5 241. IONpath denies each and every allegation of this paragraph.

6 **RESPONSE TO RELIEF REQUESTED**

7 242. IONpath denies that Plaintiff is entitled to any of the grounds for relief enumerated in  
8 the Complaint and respectfully requests that the Court enter judgment against the Plaintiff on all of  
9 the Plaintiff's claims. To the extent that the Prayer for Relief includes any factual allegations,  
10 IONpath denies those allegations.

11 **AFFIRMATIVE DEFENSES**

12 243. IONpath asserts the following affirmative and other defenses and in asserting such  
13 defenses IONpath does not concede that it bears the burden of proof as to any of them.

14 **FIRST AFFIRMATIVE DEFENSE**  
15 **(NON-INFRINGEMENT)**

16 244. IONpath does not make, use, sell, offer for sale, or import into the United States, and  
17 has not made, used, sold, offered for sale or imported into the United States, any products or methods  
18 that infringe any asserted claim of the patents-in-suit, either directly, through the doctrine of  
19 equivalents, or otherwise. Merely by way of example, the accused IONpath product "MIBIScope"  
20 does not infringe asserted claim 9 of the '386 patent at least because the method of using the  
21 MIBIScope does not include "vaporizing, atomizing, and ionizing multiple elemental tags from a  
22 first single cell of the plurality of tagged cells." This claim element is not infringed at least in part  
23 because the MIBIScope's ion gun does not "vaporize, atomize, and ionize" a sample.

24 **SECOND AFFIRMATIVE DEFENSE**  
25 **(INVALIDITY)**

26 245. One or more asserted claims of the patents-in-suit are invalid for failure to meet the  
27 conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. §§  
28 101, 102, 103, 112, and/or 116. The asserted claims of the patents-in-suit are invalid at least for the



1 reasons set forth in IONpath’s Preliminary Invalidity Contentions, served April 1, 2020. Merely by  
 2 way of non-limiting example, claim 9 of the ’386 patent is invalid as obvious in view of the admitted  
 3 prior art patent publication US 2002/0086441 to Baranov et al. That is, a person of skill in the art  
 4 would have found the ’386 patent’s claim 9 to be obvious in view of the teaching of US  
 5 2002/0086441.

6 **THIRD AFFIRMATIVE DEFENSE**  
 7 **(PROSECUTION HISTORY ESTOPPEL)**

8 246. Fluidigm is estopped, based on statements, representations, and admissions made  
 9 during prosecution of the patent applications that led to the patents-in-suit from asserting that the  
 10 asserted claims of the patents-in-suit are infringed by IONpath or IONpath’s products or services,  
 11 either directly, through the doctrine of equivalents, or otherwise. Estoppel includes but is not limited  
 12 to amendment-type prosecution history estoppel and argument-type prosecution history estoppel.

13 247. Merely by way of non-limiting example, Fluidigm is estopped at least in part based  
 14 on representations made during the prosecution of application that led to the issuance of the ’386  
 15 patent regarding prior art reference US 2002/0086441 to Baranov et al. For example, the ’386  
 16 applicant stated that “the cited portions of Baranov” — which state that ‘by employing  
 17 microablation it is feasible to distinguish cancerous cells from normal cells on histological section  
 18 of biopsy samples using element-tagged antibodies specifically attached to the markers of cancerous  
 19 populations” (US 2002/0086441 at [0098])— “are silent with respect to any benefits of detecting  
 20 element tags in individual cells.” (US Patent App. No. 15/888871 Response to Pre-Interview  
 21 Communication, September 18, 2018, p. 8).

22 **FOURTH AFFIRMATIVE DEFENSE**  
 23 **(DAMAGES LIMITATIONS)**

24 248. On information or belief, Fluidigm’s claims for damages are barred, in whole or in  
 25 part, under 35 U.S.C. §§ 286-287.

26 **FIFTH AFFIRMATIVE DEFENSE**  
 27 **(ENSNAREMENT)**

249. To the extent that Fluidigm claims infringement under the Doctrine of Equivalents, Fluidigm's claims are barred under the Ensnarement Doctrine, which prohibits Fluidigm from asserting an infringement theory under the Doctrine of Equivalents that encompasses, or "ensnares," the prior art.

250. Merely by way of non-limiting example, Fluidigm's infringement contentions invoke the Doctrine of Equivalents to allege that the claim limitation "vaporize, atomize, and ionize" is infringed by the MIBI system. To the extent a secondary ion mass spectroscopy (SIMS) system such as the MIBIScope allegedly infringes this claim element under the Doctrine of Equivalents, there is known prior art ensnared by this argument that would render such a claim invalid. Such prior art includes but is not limited to prior art in the SIMS field that IONpath has identified in IONpath's Preliminary Invalidity Contentions served April 1, 2020, which are incorporated herein by reference. Such prior art includes, for example, the article "Identification of Cellular Sections with Imaging Mass Spectrometry Following Freeze Fracture" by Thomas P. Roddy et al., published in volume 74 of Analytical Chemistry in 2002.

#### **RESERVATION OF DEFENSES**

251. IONpath reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation.

#### **COUNTERCLAIMS**

For its counterclaims against Plaintiffs Fluidigm Corporation and Fluidigm Canada, Inc.'s (collectively "Fluidigm" or "Plaintiffs"), Defendant IONpath Corporation ("Defendant") alleges as follows:

#### **PARTIES**

1. IONpath is a corporation organized and existing under the laws of the State of Delaware.

2. According to Fluidigm's allegations in this action, Fluidigm Corporation is a Delaware corporation with a principal place of business located at 7000 Shoreline Court, Ste 100, South San Francisco, California 94080.

1           3.     According to Fluidigm's allegations in this action, Fluidigm Canada Inc. is an Ontario  
2 corporation organized under the laws of Ontario with its principal place of business at 1380 Rodick  
3 Rd., Markham, Suite 100, Ontario, L3R 4G5 Canada.

4           4.     According to Fluidigm's allegations in this action, Fluidigm Canada Inc. is a wholly  
5 owned subsidiary of Fluidigm Sciences Inc., a Delaware corporation, which is a wholly owned  
6 subsidiary of Fluidigm Corporation.

7                                   **JURISDICTION AND VENUE**

8           5.     These counterclaims arise under Title 35 of the United States Code. The Court has  
9 subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201,  
10 and 2202.

11          6.     Fluidigm is subject to personal jurisdiction in this District because Fluidigm filed this  
12 action in this District.

13          7.     Venue is appropriate in this District under 28 U.S.C. § 1391 because Fluidigm filed  
14 this action in this District.

15                                   **COUNT I**  
16                                   **DECLARATORY JUDGEMENT OF NON-INFRINGEMENT**  
                                     **AND INVALIDITY REGARDING THE '386 PATENT**

17          8.     Defendant repeats and re-alleges each and every allegation set forth in the foregoing  
18 Paragraphs as if fully set forth herein.

19          9.     Defendant counterclaims against Fluidigm pursuant to the patent laws of the United  
20 States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201  
21 and 2202.

22          10.    In its Complaint, Fluidigm alleges that Defendant is directly infringing the '386 patent  
23 and that the '386 patent is valid and enforceable.

24          11.    An actual controversy exists between Fluidigm and Defendant by virtue of the  
25 allegations in Fluidigm's Complaint and Defendant's Answer as to the validity and infringement of  
26 the '386 Patent.

27          12.    Defendant has not directly infringed any asserted claim of the '386 patent as alleged  
28 in Paragraphs 132 to 144 above. Merely by way of non-limiting example, IONpath's MIBIScope

1 does not infringe claim 9 of the '386 patent at least because the method of using the MIBIScope  
 2 does not include "vaporizing, atomizing, and ionizing multiple elemental tags from a first single  
 3 cell of the plurality of tagged cells." This claim element is not infringed at least in part because the  
 4 MIBIScope's ion gun does not "vaporize, atomize, and ionize" a sample.

5 13. The '386 patent is invalid for failing to meet the conditions of patentability as set forth  
 6 in 35 U.S.C. §§ 101, 102, 103, and 112, as alleged in Paragraph 133 above. Merely by way of non-  
 7 limiting example, claim 9 of the '386 patent is invalid as obvious in view of the admitted prior art  
 8 patent publication US 2002/0086441 to Baranov et al. That is, a person of skill in the art would  
 9 have found the '386 patent's claim 9 to be obvious in view of the teaching of US 2002/0086441. In  
 10 a further example, the asserted claims of the '386 patent are invalid for any one or more reasons set  
 11 forth in IONpath's Preliminary Invalidity Contentions served April 1, 2020, which are incorporated  
 12 herein by reference.

13 14. Defendant is entitled to judgment that Defendant does not infringe the '386 Patent and  
 14 that the claims of the '386 patent is invalid.

15 **COUNT II**  
 16 **DECLARATORY JUDGEMENT OF NON-INFRINGEMENT**  
 17 **AND INVALIDITY REGARDING THE '104 PATENT**

18 15. Defendant repeats and re-alleges each and every allegation set forth in the foregoing  
 19 Paragraphs as if fully set forth herein.

20 16. Defendant counterclaims against Fluidigm pursuant to the patent laws of the United  
 21 States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201  
 22 and 2202.

23 17. In its Complaint, Fluidigm alleges that Defendant is directly infringing the '104 patent  
 24 and that the '104 patent is valid and enforceable.

25 18. An actual controversy exists between Fluidigm and Defendant by virtue of the  
 26 allegations in Fluidigm's Complaint and Defendant's Answer as to the validity and infringement of  
 27 the '104 Patent.

28 19. Defendant has not directly infringed any asserted claim of the '104 patent as alleged  
 in Paragraphs 170 to 181 above. Merely by way of non-limiting example, IONpath's MIBIScope

1 does not infringe claim 2 of the '104 patent at least because the MIBIScope does not analyze an  
2 analyte where the analyte is located "within or on an intact cell." To the contrary, the IONpath  
3 MIBIScope does not analyze an intact cell.

4 20. The '104 patent is invalid for failing to meet the conditions of patentability as set forth  
5 in 35 U.S.C. §§ 101, 102, 103, and 112, as alleged in Paragraph 171 above. Merely by way of non-  
6 limiting example, claim 2 of the '104 patent is invalid as obvious in view of the admitted prior art  
7 patent publication US 2002/0086441 to Baranov et al in combination with the teaching of US Patent  
8 No. 6,652,835 to Lauffer. That is, a person of skill in the art would have found that the two  
9 references would have been obvious to combine, and that the combination would render obvious  
10 each and every element of the '104 patent's claim 2. In a further example, the asserted claims of  
11 the '104 patent are invalid for any one or more reasons set forth in IONpath's Preliminary Invalidity  
12 Contentions served April 1, 2020, which are incorporated herein by reference.

13 21. Defendant is entitled to judgment that Defendant does not infringe the '104 Patent and  
14 that the claims of the '104 patent is invalid.

15 **COUNT III**  
16 **DECLARATORY JUDGEMENT OF NON-INFRINGEMENT**  
**AND INVALIDITY REGARDING THE '698 PATENT**

17 22. Defendant repeats and re-alleges each and every allegation set forth in the foregoing  
18 Paragraphs as if fully set forth herein.

19 23. Defendant counterclaims against Fluidigm pursuant to the patent laws of the United  
20 States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201  
21 and 2202.

22 24. In its Complaint, Fluidigm alleges that Defendant is directly infringing the '698 patent  
23 and that the '698 patent is valid and enforceable.

24 25. An actual controversy exists between Fluidigm and Defendant by virtue of the  
25 allegations in Fluidigm's Complaint and Defendant's Answer as to the validity and infringement of  
26 the '698 Patent.

27 26. Defendant has not directly infringed any asserted claim of the '698 patent as alleged  
28 in Paragraphs 204 to 216 above. Merely by way of non-limiting example, IONpath's MIBIScope

1 does not infringe claim 5 of the '698 patent at least because the method of using the MIBIScope  
 2 does not include "vaporizing, atomizing, and ionizing multiple elemental tags from a first single  
 3 cell of the plurality of tagged cells." This claim element is not infringed at least in part because the  
 4 MIBIScope's ion gun does not "vaporize, atomize, and ionize" a sample.

5 27. The '698 patent is invalid for failing to meet the conditions of patentability as set forth  
 6 in 35 U.S.C. §§ 101, 102, 103, and 112, as alleged in Paragraph 205 above. Merely by way of non-  
 7 limiting example, claim 5 of the '698 patent is invalid as obvious in view of the admitted prior art  
 8 patent publication US 2002/0086441 to Baranov et al. That is, a person of skill in the art would  
 9 have found the '698 patent's claim 5 to be obvious in view of the teaching of US 2002/0086441. In  
 10 a further example, the asserted claims of the '698 patent are invalid for any one or more reasons set  
 11 forth in IONpath's Preliminary Invalidity Contentions served April 1, 2020, which are incorporated  
 12 herein by reference.

13 28. Defendant is entitled to judgment that Defendant does not infringe the '698 Patent and  
 14 that the claims of the '698 patent is invalid.

### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, Defendant prays for judgment against Fluidigm as follows:

17 A. For dismissal of Fluidigm's Complaint with prejudice and denial of the relief  
 18 requested;

19 B. For a judgment declaring that IONpath did not intentionally interfere with Fluidigm's  
 20 contractual relations;

21 C. For a judgment declaring that no valid claim of the '386 patent has been infringed by  
 22 Defendant;

23 D. For a judgment declaring that each and every asserted claim of the '386 patent is  
 24 invalid;

25 E. For a judgment declaring that no valid claim of the '104 patent has been infringed by  
 26 Defendant;

27 F. For a judgment declaring that each and every asserted claim of the '104 patent is  
 28 invalid;

1           G.     For a judgment declaring that no valid claim of the '698 patent has been infringed by  
2 Defendant;

3           H.     For a judgment declaring that each and every asserted claim of the '698 patent is  
4 invalid;

5           I.     For a finding that this case is exceptional and an award of Defendant's reasonable  
6 attorneys' fees and costs pursuant to 35 U.S.C. § 285;

7           J.     For such other and further relief as the Court may deem just and appropriate.  
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**JURY DEMAND**

Defendants demand a trial by jury, under Fed. R. Civ. P. 38.

Dated: April 13, 2020

WILMER CUTLER PICKERING, HALE  
AND DORR LLP

By: /s/ Sonal N. Mehta  
SONAL N. MEHTA  
OMAR A. KHAN  
JOSEPH TAYLOR GOOCH  
JOSHUA D. FURMAN

*Attorneys for Defendant IONpath, Inc.*